IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 583 OF 2005

Dewanchand Ramsaran Industries (P) Ltd. .. Petitioners
V/s.
Union of India & Ors. .. Respondents

Mr. K.R. Bulchandani with Mr. J.P. Shah & Ms. L.K. Bulchandani i/b. M/s. Kamla & Co. for the Petitioners
Mr. P.S. Jetly with Mr. Y.R. Mishra for the Respondent Nos. 1 and 2.
Mr. U.J. Makhija with Mr. Gandhi i/b. M/s. Mulla & Mulla & CBC for the Respondent No. 3
None present for the Respondent No. 4.
Mr. D.B. Shroff i/b. M/s. Mustafa Motiwala & Co. for the Respondent Nos. 5 and 6.
Mr. Jitu Kumar Sharma General Manager (Technical) of Respondent No. 6 present.

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 28.02.2005

P.C.:-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the Petitioners and the learned counsel for the Respondents. The learned counsel for the Respondents waives service. By consent taken up for hearing forthwith. Perused also the affidavit of Jitu Kumar Sharma, General Manager (Technical) of the Respondent No. 6 dated 28.2.2005. After hearing the parties for some time, both the learned counsel for the Petitioner and the Respondents agree that the following order can be passed with their consent and that no reasons need be given:-

2. The learned counsel for the Respondent No. 6 produced before us the original copy of extract of the

Resolution passed at the Board Meeting of Directors of

the Respondent No. 6 dated 25.2.2005, whereby Mr. Jitu Kumar Sharma, General Manager, Technical of the Respondent No. 6 Company is authorised to give appropriate undertakings/indemnities on behalf of the Company, as mentioned in the said resolution. A xerox copy of the same is taken on record and marked as ‘X’ for identification.

3. The said Mr. Jitu Kumar Sharma has filed an affidavit dated 28.2.2005 before this Court, wherein in paragraph no. 20, he has undertaken as under:-

> 20. Respondent No. 6 undertakes to this Hon’ble Court as under:
>
> (i) To pay all Port dues to Respondent No 3 in respect of the Rig from 25 December 2004 till clearance of the Rig from the Mumbai Port Trust, within two days of the order being passed by this Hon’ble Court on the basis of the undertakings.
>
> (ii) Without prejudice to the fact that the export obligation has been transferred by Respondent No. 2 to Respondent No. 6 and Respondent No. 6 has issued a bond and bank guarantee in favour of the Commissioner of Customs, and the fact that therefore no customs duty would be payable on the importation of the Rig, Respondent No. 6 indemnifies the Petitioners for payment of all customs duties, if the Customs Authorities seek to levy/recover duties under the said Bond, Exhibit "A" to the Petition.
>
> (iii) Respondent No 6 indemnifies the Petitioners in respect of any demand of octroi duty from Respondent No. 4 regarding the Rig.
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> It is respectfully submitted that these undertakings are subject to Respondent No. 6 being allowed to take the Rig from Respondent No. 3.

The said undertakings are accepted.

4. The Respondent No. 6 has already executed a fresh bond in favour of the Custom Authority in the sum of Rs. 17,05,40,892/- dated 1.2.2005 in lieu of the Petitioner's bond dated 20.8.2003. The said bond dated 1.2.2005 has already been accepted by the Customs Authorities. The learned counsel appearing for the Customs Authorities, Shri Jetly also agrees that the Petitioner's bond has been replaced by the fresh bond executed by the Respondent No. 6. Under these circumstances, we discharge and release the Petitioners from the bond dated 20.8.2003. In view of the undertaking given by the Respondent No. 6 all the charges payable to Bombay Port Trust, shall be borne by the Respondent No. 6.

5. The learned counsel for the Petitioner Shri Bulchandani, on instructions from Mr. Jayesh Ashar, General Manager of the Petitioner, who is present in Court, assures this Court that latest by Wednesday, i.e. 2.3.2005, the original N-form will be handed over to the learned Advocates for the Respondent No. 6, so as to enable them to proceed further with the Bombay Municipal Corporation Authority to get the said N-form transferred in their name. Shri Shroff, the learned counsel appearing for the Respondent No. 6 assures that the Respondent No. 6 will bear the entire octroi duty, if

any, that were to be demanded by the Respondent Corporation from the Petitioner. Shri Jitu Kumar Sharma

of Respondent No. 6 also undertakes to the above effect, the said undertaking is accepted.

6. The Petitioners seems to have a claim against the Respondent No. 5 in the above as mentioned in paragraph 17 of the Petition. In paragraph no. 18 of the Affidavit of the Respondent No. 6, it is stated that the Respondent No. 5 does not owe any money to the Petitioners, which fact is not admitted by the Petitioners. The issue with regard to the said claim is expressly kept open and the same can be decided strictly on it’s own merits and in accordance with law. Shri Bulchandani, the learned counsel for the Petitioner undertakes that the Petition will be numbered within a period of two weeks from today. Writ Petition stands disposed of in the above terms.

7. Parties to act on an ordinary copy of this order, duly authenticated by the Associate/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)